

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

SHECK MULBAH, Plaintiff, vs. CODY JANSEN, Defendant.	Civ. <u>20-4127</u> COMPLAINT
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COMES NOW the Plaintiff, Sheck Mulbah, for his Complaint against the Defendant, Cody Jansen, and hereby states and alleges as follows:

PARTIES

1. Plaintiff Sheck Mulbah (Plaintiff) is a resident of New York City, New York, and a citizen of the State of New York.

2. To the best of Plaintiff's knowledge, Defendant Cody Jansen (Defendant) is a South Dakota Highway Patrol Trooper who is resident and citizen of the State of South Dakota. Defendant is named in his individual capacity.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 because the case arises under the Constitution and laws of the United States, as applied to state and local authorities through 42 U.S.C. § 1983.

4. Venue in the United States District Court for the District of South Dakota is proper pursuant to 28 U.S.C. § 1391(b)(1)-(2) because Defendant resides in this judicial

district and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district..

5. Plaintiff served notice of his causes of action on the applicable public entities pursuant to SDCL §§ 3-21-2 and 3-21-3.

FACTS

6. At approximately 10:40 p.m. on June 19, 2020, Plaintiff drove a white Dodge Caravan rental on I-90 near Sioux Falls, South Dakota, when Defendant pulled him over.

7. From the commencement of the stop to the end, Defendant acted under color of state law in his capacity as a South Dakota Highway Patrol Trooper.

8. Plaintiff and the two passengers in the rental car are friends who graduated from Stanford University in spring 2020. All three are Black men in their early twenties.

9. Defendant is white.

10. After initiating the stop (0:00),¹ Defendant approached the passenger side of the vehicle and stated that he pulled the vehicle over for a speeding violation.

11. Plaintiff did not exceed the speed limit during the time in question.

12. Defendant asked Plaintiff to accompany him back to the patrol vehicle so he could write a warning.

13. As they approached the patrol vehicle, Defendant's canine in a backseat cage began aggressively barking, snapping, and growling (1:30).

¹ This time-marker is used to designate the time when the stop began (0:00 meaning the stop's inception), various important moments during the stop, and when the stop ended. The times designated are approximate.

14. Defendant directed Plaintiff to sit in the passenger seat, which was moved far forward toward the dash and was confined to a small space because Defendant's laptop was positioned over the seat where a person would normally sit.

15. Because the front seat was an unmanageably small space that Plaintiff could not fit into, it took multiple efforts to close the car door and situate himself, a process that took approximately 15 seconds (1:40-1:55).

16. Defendant made no effort to make the space allotted to Plaintiff less cramped.

17. The canine exhibited hostile behavior toward Plaintiff, barking right behind Plaintiff's head, especially loudly when he spoke, and Defendant did not command the canine to calm down until approximately 60 seconds of barking elapsed (1:30-2:30).

18. Approximately 10 seconds after first commanding the canine to be quiet (2:38-2:40), Defendant had to command the dog a second time to calm down because it was acting hostile again.

19. Defendant asked Plaintiff various travel itinerary-related questions. Plaintiff indicated he and his friends just graduated college at Stanford and were going on a road trip from California to drop off one friend at a new job in Chicago, after which Plaintiff would fly to his hometown of New York City.

20. While Defendant asked travel plan questions, he opened his laptop, further encroaching on Plaintiff's personal space and requiring him to contort his body by bending his left arm in an uncomfortable manner in order to remain seated and comply with Defendant's directions.

21. Defendant completely disregarded Plaintiff's obvious physical discomfort.

22. Defendant asked Plaintiff why he chose to drive to Chicago instead of taking a flight, and Plaintiff explained that he and his friends are first-generation low income students, so this road trip was their opportunity to have a fun trip because they cannot afford to travel as freely as some of their Stanford classmates. Plaintiff indicated they stopped at Mount Rushmore.

23. The canine repeatedly and aggressively barked at Plaintiff five more times while he was in the patrol car (3:20-3:22; 3:34-3:36; 7:41-7:47; 10:23-10:40; 11:04-11:06).

24. Each time the dog barked, Plaintiff was visibly startled.

25. Defendant proceeded to ask Plaintiff various personal questions—whether he was starting a new job after college and whether he grew up in New York City.

26. During Defendant's questioning, he slowly typed and scrolled on his laptop, presumably for the purpose of completing the warning citation.

27. Approximately 10 minutes and 15 seconds into the stop, Defendant asked a series of questions unrelated to the purpose of the speeding warning, rather they were related to drug trafficking and crime in general.

28. Defendant asked whether Plaintiff or his friends were carrying any weapons.

29. Defendant asked whether they had guns.

30. Defendant asked whether they had marijuana.

31. Defendant asked whether they had methamphetamine.

32. Defendant asked whether they had cocaine.

33. Defendant asked whether they had paraphernalia.

34. Defendant asked whether they had waxes or oils.

35. Plaintiff did not know what Defendant meant by waxes or oils, he asked whether Defendant was referring to candles, and Defendant clarified he was asking about THC wax or oils.

36. Plaintiff answered no to all of the questions about drugs and crime in general.

37. While asking these questions, Defendant was printing the warning citation, and before handing it to Plaintiff, Defendant asked whether Plaintiff would allow him to search the vehicle to make sure they did not possess any of the illegal items that were the focus of Defendant's last round of questions.

38. Plaintiff said yes because he did not feel as though he had the freedom to say no to the search.

39. Then Defendant handed Plaintiff the printed warning.

40. Defendant's questions regarding drug trafficking and crime in general lasted approximately 35 seconds (10:15-10:50).

41. Throughout most of the last round of questions, the canine aggressively barked right behind Plaintiff (10:23-10:40).

42. Defendant indicated he would go ask the other passengers of the rental whether he could search, and Defendant suggested Plaintiff exit the vehicle so he did not have to sit next to the canine. The canine barked as Defendant made this suggestion.

43. Plaintiff was seated in the patrol vehicle for 9 minutes and 18 seconds (1:55-11:13).

44. Plaintiff experienced extreme emotional harm while in the patrol vehicle, including fear, humiliation, and mental anguish, because he was forced into an unreasonably

small seat while a hostile dog barked and snarled behind his head and he was subjected to questioning about drug trafficking and general crime when he was pulled over for allegedly speeding.

45. Adding to Plaintiff's extreme emotional harm was his awareness that, for many Black people in situations just like this, interactions with law enforcement that start out cordial can quickly escalate into violent experiences where Black people end up killed at the hands of law enforcement.

46. Further adding to Plaintiff's extreme emotional harm was his awareness of Defendant's use of a police canine for intimidation, in light of America's history of law enforcement, dating back to slave patrols and through civil rights protests, using dogs to violently control Black people.

47. While in the patrol vehicle, Plaintiff did not exhibit signs of excessive nervousness, despite the nature of this traffic stop—forcing Plaintiff into a confined space while a canine aggressively barked behind his head.

48. While in the patrol vehicle, Plaintiff did not provide any suspicious or inconsistent answers to Defendant's questions.

49. When Defendant reached the passenger side of the rental car, he asked the two passengers questions related to drug trafficking and crime in general, and the questioning lasted approximately 8 seconds (11:35-11:43).

50. Defendant asked whether they had any alcohol.

51. Defendant asked whether they had any marijuana.

52. Defendant asked whether they had any methamphetamine.

53. Defendant asked whether they had any cocaine.

54. The passengers answered no to each question about drugs and crime in general.

55. Defendant then asked the passengers whether he could search the vehicle, they did not agree right away, so Defendant asked again, and they said yes.

56. Defendant told the three young Black men that they had “nothing to worry about if [they] don’t have anything.” (12:13-12:15).

57. Defendant asked the three young men to open their bags for him while he stood at the back of the rental car with his flashlight.

58. While opening their bags, Defendant indicated that California is a source state for marijuana and he wanted to make sure the bags in the car were “not full of weed or something.” (12:45-12:53).

59. Before the search concluded, Defendant asked whether Plaintiff and his friends had seen “any big riots” in California. (17:07-17:09).

60. Understanding Defendant to be referring to the racial justice protests occurring after the killing of George Floyd, Plaintiff responded that there were peaceful protests—not riots.

61. Defendant’s search of the vehicle lasted approximately 7 minutes and 13 seconds (12:12-19:25).

62. Defendant discovered nothing illegal during the stop and search of the rental car.

63. When Defendant returned to the patrol car, he said, “good boy,” and “good boy, buddy,” to the canine (19:40-19:44).

64. Starting from when Plaintiff parked his vehicle, the entire traffic stop lasted approximately 19 minutes and 42 seconds.

COUNT I
Unlawful seizure
in violation of 42 U.S.C. § 1983 and the
Fourth and Fourteenth Amendments of the United States Constitution

65. Plaintiff re-alleges all previous paragraphs of this Complaint and incorporates them as if fully set forth here.

66. The law required Defendant to have reasonable suspicion or probable cause in order to conduct a traffic stop of Plaintiff.

67. Because Plaintiff did not violate traffic laws or any other laws during the time period in issue, Defendant lacked a lawful basis for stopping Plaintiff.

68. Accordingly, Defendant’s stop of Plaintiff violated clearly established rights under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments of the United States Constitution.

69. Defendant’s unlawful stop directly and proximately damaged Plaintiff because it violated his clearly established rights and subjected him to emotional harm, including fear, humiliation, and mental anguish.

70. Defendant should be held liable in his individual capacity for unlawfully stopping Plaintiff.

COUNT TWO

**Unlawful seizure (prolongation)
in violation of 42 U.S.C. § 1983 and the
Fourth and Fourteenth Amendments of the United States Constitution**

71. Plaintiff re-alleges all previous paragraphs of this Complaint and incorporates them as if fully set forth here.

72. Independent from the commencement of an unlawful stop, Defendant unlawfully prolonged the stop in violation of the holding of the Supreme Court of the United States in Rodriguez v. United States, 575 U.S. 348 (2015).

73. In questioning Plaintiff about various matters unrelated to his alleged speeding—specifically, about drug trafficking and crime in general, about why he was driving instead of flying, about his hometown—Defendant added time to the stop without reasonable suspicion for doing so.

74. Also without reasonable suspicion, Defendant further added time to the stop by questioning the two passengers of the rental vehicle on subjects unrelated to alleged speeding—specifically, whether they were involved in drug trafficking or criminal activity in general.

75. Defendant also added time to the stop by requiring Plaintiff to situate himself in a passenger seat that was unmanageably small and by questioning Plaintiff while a hostile canine barked and growled behind Plaintiff's head.

76. As a further violation of Rodriguez, Defendant failed to act reasonably diligent in completing the mission of the stop for an alleged speeding infraction, specifically by requiring Plaintiff to situate himself in a passenger seat that was unmanageably small and by

questioning Plaintiff about drug trafficking while a hostile canine barked and growled behind Plaintiff's head.

77. Accordingly, Defendant's prolongation of the stop of Plaintiff violated clearly established rights under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments of the United States Constitution.

78. Defendant's unlawful prolongation of the stop directly and proximately damaged Plaintiff because it violated his clearly established rights and subjected him to emotional harm, including fear, humiliation, and mental anguish.

79. Defendant should be held liable in his individual capacity for unlawfully prolonging the stop of Plaintiff.

COUNT THREE

Unlawful search

in violation of 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments of the United States Constitution

80. Plaintiff re-alleges all previous paragraphs of this Complaint and incorporates them as if fully set forth here.

81. Under the totality of the circumstances, the objective factors of the situation when Defendant asked Plaintiff for consent to search the vehicle demonstrate that Plaintiff's choice to allow the search was not voluntary, rather it was a product of duress or coercion.

82. These objective factors include but are not limited to: confining Plaintiff to a tiny a seat he could barely fit into, allowing the police canine to viciously bark and snarl being Plaintiff's head, interrogating Plaintiff on whether he was trafficking drugs or committing various other crimes, extending a routine traffic stop beyond the time necessary

to complete the permissible investigation, and not handing Plaintiff the citation before asking to search.

83. Further, Defendant asked to search as a continuation of his sequence of unlawful conduct, beginning with the unlawful stop and the unlawful prolongation of the stop, all of which undermines the voluntariness of Plaintiff allowing the search.

84. Additionally, because Defendant had to ask the passengers of the rental car twice for permission to search, as they refused at first, and because those actions were a further continuation of Defendant's series of unlawful acts, the passengers letting the search occur does not render the search lawful.

85. Accordingly, Defendant's search of the rental car Plaintiff drove violated clearly established rights under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments of the United States Constitution.

86. Defendant's unlawful search directly and proximately damaged Plaintiff because it violated his clearly established rights and subjected him to emotional harm, including fear, humiliation, and mental anguish.

87. Defendant should be held liable in his individual capacity for unlawfully searching the rental car Plaintiff drove.

WHEREFORE, Plaintiff respectfully prays for damages against Defendant as follows:

- (1) For Plaintiff's compensatory, general, and special damages in an amount that the Court deems just and proper under the circumstances;

- (2) For punitive damages based on Defendant's reckless or wanton conduct, malicious conduct, and oppressive conduct, in an amount that the Court deems just and proper under the circumstances;
- (3) In the alternative to (1) and (2), for nominal damages;
- (4) For Plaintiff's costs and disbursements herein;
- (5) For prejudgment and post-judgment interest;
- (6) For reasonable attorneys' and experts' fees pursuant to 42 U.S.C. § 1988; and
- (7) For such other and further relief as the Court determines to be just and proper.

Dated this 26th day of August, 2020.

**HEIDPRIEM, PURTELL
SIEGEL & HINRICHS, LLP**

BY /s/ Pete Heidepriem
Scott N. Heidepriem (scott@hpslawfirm.com)
John R. Hinrichs (john@hpslawfirm.com)
Matthew A. Tysdal (matthew@hpslawfirm.com)
Pete Heidepriem (pete@hpslawfirm.com)
101 West 69th Street, Suite 105
Sioux Falls, SD 57108
(605) 679-4470

RANDY SEILER LAW OFFICE, LLC
Randy Seiler (randyseilerlaw@gmail.com)
2411 Whispering Shores Drive
Fort Pierre, SD 57532
(605) 222-8877

Attorneys for the Plaintiff

JS 44 (Rev. 09/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Sheck Mulbah

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Scott Heidepriem, John Hinrichs, Matthew Tysdal, Pete Heidepriem,
Randy Seiler
101 West 69th Street Suite 105 Sioux Falls, SD 57108

DEFENDANTS

Cody Jansen

County of Residence of First Listed Defendant Clay

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 1983

Brief description of cause:

Unconstitutional seizures and search by law enforcement

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/26/2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE